

# **EXHIBIT E**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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IRVING H. PICARD,

Plaintiff,

-v-

SAUL B. KATZ et al.,

Defendants.

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11 Civ. 3605 (JSR)

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JED S. RAKOFF, U.S.D.J.

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A central issue in the forthcoming trial is whether the transfers that Madoff Securities made to the defendants during the two years preceding Madoff Securities' filing for bankruptcy -- up to an amount equal to their investment with Madoff Securities during the same period -- were received by the defendants in good faith, i.e., without their having willfully blinded themselves to Madoff's scheme. At the in-court conference on March 9, 2012, the parties raised the question of whether, on the facts of this case, this issue should be viewed as an issue under 11 U.S.C. § 548(a)(1)(A), in which case the burden of proving willful blindness would be on the plaintiff, or as an issue under 11 U.S.C. § 548(c), in which case the burden of proving the absence of willful blindness would be on the defendants. Having considered the parties' submissions, the Court adheres to its prior determination that this is an issue under § 548(c), and that therefore the burden of proving, by a preponderance of the evidence, that the defendants received the aforementioned transfers in good faith (i.e.,

in the absence of willful blindness) rests on the defendants. The Court will include a discussion of the reasons for this determination in its forthcoming opinion explaining the reasons for its recent rulings on the parties' summary judgment motions.

SO ORDERED.

  
JED S. RAKOFF, U.S.D.J.

Dated: New York, New York  
March 13, 2012